

The Honorable John C. Coughenour

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

ESSEX INSURANCE COMPANY, a Delaware ) Corporation, )	
Plaintiff, )	No. C09-0541
v. )	DEFENDANT SEATTLE HOUSING
PACIFIC COMPONENTS, INC., a Washington )	AUTHORITY'S ANSWER,
corporation, ABSHER CONSTRUCTION )	AFFIRMATIVE DEFENSES, AND
COMPANY, a Washington joint venture, and )	COUNTERCLAIM
SEATTLE HOUSING AUTHORITY, a )	
Washington municipal corporation, )	
Defendants. )	

COMES NOW Defendant Seattle Housing Authority, (hereinafter "SHA") by and through its counsel of record, Foster Pepper PLLC and answers Plaintiff's Essex Insurance Company's (hereinafter "Essex") Complaint For Declaratory Judgment, paragraph by paragraph, and asserts its affirmative defenses, and a counterclaim against Essex as follows:

**I. PARTIES**

- 1.1 Defendant SHA is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 1.1 and therefore denies them.
- 1.2 Defendant admits the allegations in paragraph 1.2.
- 1.3 Defendant admits the allegations in paragraph 1.3.

1.4 Defendant admits the allegations in paragraph 1.4.

1.5 Defendant admits the allegations in paragraph 1.5.

## II. JURISDICTION AND VENUE

2.1 Defendant SHA is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 2.1 and therefore denies them.

2.2 Defendant SHA is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 2.2 and therefore denies them.

2.3 Defendant SHA is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 2.3 and therefore denies them.

## III. FACTS

### 3.1 Suits.

(a) Defendant admits the allegations in paragraph 3.1(a).

(b) Defendant SHA admits that the NewHolly Homeowners' Association's ("NHHA") Complaint referred to in paragraph 3.1(b) speaks for itself. To the extent the Complaint is incorrectly cited, or NHHA's allegations are incorrectly cited, paragraph 3.1(b) is denied. All allegations not expressly admitted are denied.

3.2 Tender. Defendant SHA is without knowledge or information sufficient to form a belief as to the truth of the allegations regarding Pacific Components, Inc.'s (hereinafter "PCI") tender of defense in the SHA suit to Essex, or that Essex is defending PCI under a full reservation of rights. Defendant SHA admits that it tendered its defense in the NHHA suit to Essex and that Essex has denied coverage and denied any duty to defend in the NHHA suit. All allegations not expressly admitted are denied.

3.3 Defendant SHA is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 3.3 and therefore denies them.

1           3.4     Defendant SHA is without knowledge or information sufficient to form a belief as  
2 to the truth of the allegations in paragraph 3.4 and therefore denies them.

3                                   **IV.     CLAIM FOR RELIEF**

4           4.1     Defendant SHA is without knowledge or information sufficient to form a belief as  
5 to the truth of the allegations in paragraph 4.1 and therefore denies them.

6           4.2     Defendant SHA is without knowledge or information sufficient to form a belief as  
7 to the truth of the allegations in paragraph 4.2 and therefore denies them.

8           4.3     Defendant SHA is without knowledge or information sufficient to form a belief as  
9 to the truth of the allegations in paragraph 4.3 and therefore denies them.

10           (a)     Defendant SHA is without knowledge or information sufficient to form a  
11 belief as to the truth of the allegations in paragraph 4.3(a) – (r), and therefore denies them.

12           4.4     Defendant SHA is without knowledge or information sufficient to form a belief as  
13 to the truth of the allegations in paragraphs 4.4 (a) – (c), and therefore denies them.

14                                   **V.     AFFIRMATIVE DEFENSES**

15           By way of further answer to the Complaint and without waiving any allegations  
16 previously denied, SHA asserts the following defenses and affirmative defenses:

17           5.1     Essex's action may be premature with respect to certain claims against certain  
18 parties, in which case it would fail to present a justiciable controversy.

19           5.2     Essex has failed to state a claim upon which relief may be granted.

20           5.3     Essex's claims are barred under the doctrine of waiver, estoppel, and/or laches.

21           5.4     Essex's claims are barred under the doctrine of unclean hands.

22           5.5     Essex has failed to satisfy one or more conditions precedent to the filing of its  
23 claim, as imposed by applicable state law.

24           5.6     Essex has breached the contract it purportedly seeks to enforce.  
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5.9 SHA reserves the right to allege additional affirmative defenses based upon future litigation and discovery in this action. Nothing contained in this Answer should be construed as a waiver of any such additional defenses.

By way of further answer to the Complaint and without waiving their denial of any allegations made in the Amended Complaint, SHA asserts the following counterclaim against Essex.

6.1 SHA incorporates herein by reference so much of the other portions of this pleading as is not inconsistent with this first counterclaim.

6.3 To the extent Essex does not agree to satisfy its coverage obligations and/or pay such amounts, SHA is entitled to an award of damages from Essex equal to the full unpaid cost

1 of defending against the underlying suit, settling those suits, and potentially the full amount of an  
2 adverse judgment entered in those suits. The specific amount of damages will be proven at  
3 hearing or trial.

4 6.4 SHA reserves the right to amend this pleading to add a bad faith counterclaim  
5 based on improper actions subsequently taken by Essex– for example, to the extent Essex  
6 conducts this litigation in a manner that threatens to prejudice the defense of the underlying suit.  
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## 8 **VII. REQUEST FOR RELIEF**

9 Defendant SHA requests that the Court:

10 A. Dismissal of Essex’s Complaint and denial of all relief requested therein by  
11 Essex;

12 B. A judgment declaring that Essex is obligated to provide a defense, settlement  
13 funding, and potentially indemnification in the underlying suit, and that accordingly Essex is  
14 obligated to pay SHA monetary damages resulting from Essex’s failure to provide that coverage,  
15 including but not limited to the full unpaid cost of such defense, settlement, and/or potentially a  
16 judgment entered in that suit, in an amount to be proven at hearing or trial;

17 C. A judgment awarding SHA the monetary damages to which it is entitled on its  
18 counterclaim;

19 D. A judgment awarding SHA costs and attorney fees to the full extent allowed by  
20 law (e.g., pursuant to the *Olympic Steamship* doctrine);

21 E. Prejudgment and postjudgment interest on the above amounts to the full extent  
22 allowed by law;

23 F. Permission to amend this pleading to conform to proof obtained through  
24 discovery and trial; and  
25  
26

1 G. Such other relief as this Court deems just and equitable.  
2

3 DATED this 13th day of May, 2009.

4 FOSTER PEPPER PLLC

5  
6 /s/ Colm P. Nelson

7 Edward R. Coulson, WSBA No. 14014  
8 Colm P. Nelson, WSBA No. 36735  
9 Attorneys for Defendant, Seattle Housing  
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**DECLARATION OF SERVICE**

I, Colleen Hickman, state that I am a citizen of the United States of America and a resident of the State of Washington, I am over the age of twenty one years, I am not a party to this action, and I am competent to be a witness herein. I electronically filed the **DEFENDANT SEATTLE HOUSING AUTHORITY'S ANSWER TO PLAINTIFF'S COMPLAINT** with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the following parties who have appeared in this action as of today's date:

- **Jaime Drozd Allen**  
jallen@omwlaw.com
- **Lee Corkrum**  
lcorkrum@omwlaw.com,sbordeaux@omwlaw.com
- **Michael P Grace**  
mgrace@groffmurphy.com,sdamianick@groffmurphy.com
- **Michael J Murphy**  
mmurphy@groffmurphy.com,brusso@groffmurphy.com
- **Douglas Kenneth Weigel**  
dweigel@floyd-ringer.com,ebeck@floyd-ringer.com

There are no other parties who have appeared in this action as of today's date that need to be served manually.

I DECLARE under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 13th day of May, 2009.

  
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Colleen Hickman